

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RPT METRO EQUITIES LIMITED PARTNERSHIP,

Plaintiff,

-against-

HAITRAM S. PERSAUD, JEAN S. PERSAUD,
THE CITY OF NEW YORK, CITY OF NEW YORK
ENVIRONMENTAL CONTROL BOARD,
ROOPNARINE SURJNARINE, and GOMATI
SURJNARINE,

Defendants.

U. S. DISTRICT COURT E.D. N.Y.

★ AUG 7 1998 ★

TIME A.M. _____
P.M. _____

90 Civ. 4409 (EHN)

JUDGMENT OF
FORECLOSURE
AND SALE

The Federal Deposit Insurance Corporation, as Receiver of Citytrust (the "FDIC"), having moved this Court for an order, pursuant to F.R.C.P. 55(b)(2) for entry of judgment by default against defendants Haitram S. Persaud and Jean S. Persaud (the "Persauds") permitting the FDIC to foreclose upon a mortgage executed by Haitram Persaud on three parcels of real property; and for an order, pursuant to New York Real Property Actions and Proceedings Law §1321(1), directing a referee to compute the amounts due and owing to the FDIC and this Court, by order dated September 29, 1995, having granted this motion and referred this proceeding to Magistrate Judge A. Simon Chrein to prepare a report and recommendation as to the amounts due to the FDIC, and Magistrate Judge Chrein having issued a report and recommendation dated June 19, 1996, (the "First Referee's Report") concluding that damages in the amount of \$617,879.63 were due to plaintiff, of which \$385,600.00 was principal and \$211,973.22 was interest through December 19, 1995, and \$20,306.41 were late fees; and the Persauds having filed objections to the First Referee's Report and, also, having

moved this Court for an order, pursuant to F.R.C.P. 55(c) and 60(b), vacating their default, and this Court, in a memorandum decision and order dated March 5, 1997, having denied the Persauds' motion to vacate their default and having confirmed the First Referee's Report and referring this case back to Magistrate Judge Chrein for further report and recommendation and Magistrate Judge Chrein having issued a report and recommendation dated January 6, 1998 (the "Second Referee's Report") concluding, inter alia, that RPT Metro Equities Limited Partnership ("RPT") should be substituted as plaintiff in place and stead of the FDIC, and this Court, in a memorandum decision and order dated June 2, 1998, having confirmed the Second Referee's Report and directed the entry of judgment in accordance with the Second Referee's Report; and RPT and the Persauds having entered into a stipulation dated June 9, 1998 wherein the Persauds consented to the immediate entry of judgment of foreclosure and sale (the "Stipulation").

Upon reading and filing (i) the summons and complaint filed in this action on December 21, 1990; (ii) the notice of pendency filed on July 14, 1998; (iii) the First Referee's Report; (iv) the Second Referee's Report; and (v) the Stipulation,

NOW, upon the motion of Ferber Chan & Essner, attorneys for RPT, it is hereby

ORDERED that RPT is entitled to have judgment in this action for \$617,879.63, together with interest on the unpaid principal balance of the mortgage from December 19, 1995 to the date of sale, together with the costs

and disbursements of this action as taxed by the Clerk of the Court, and it is further

ORDERED, ADJUDGED AND DECREED that the three mortgaged premises described in the complaint and as hereinafter described, be sold to the highest bidder in three separate parcels, subject to any zoning restrictions and any amendments thereto, according to law and now in force; subject to existing violations and orders of municipal departments, if any; subject to covenants and restrictions of record, if any; subject to any state of facts an accurate survey may show; at public auction on the steps of the Supreme Court of the State of New York, 360 Adams Street, Brooklyn, New York, by and under the direction of

_____, of _____

who is hereby appointed Referee for that purpose; that the Referee give notice of the time and place of the sale according to law and the practice of this Court in

_____; that the plaintiff and any other parties to this auction may become the purchaser or purchasers at such sale; that in the case that the plaintiff or its assignee shall become the purchaser at the said sale, it shall not be required to make any deposit thereon; that said Referee execute to the purchaser or purchasers on such sale a deed or deeds to the premises sold; that said Referee on receiving the proceeds of such sale forthwith pay therefrom the taxes, assessments, or water rates which are or may become liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon from the date of payment; that current taxes be apportioned and that the said Referee then deposit the balance of the proceeds

of sale in his own name as Referee at _____ and shall thereafter make the following payments and his checks drawn for that purpose shall be paid by the said depository:

1. The statutory fees of the Referee, not to exceed \$500.00.
2. All of the expense of the sale, including but not limited to, advertising expenses and any transfer taxes payable by the Referee as grantor-transferor, as shown on the bills presented and certified by the Referee.
3. The sum of \$617,879.63, the amount due as aforesaid, together with interest on the principal amount of \$385,600.00 from December 19, 1995 through the date of sale, such advances as the plaintiff shall have made for the mortgage insurance premiums, fire and other casualty insurance, and such other expenses incurred, including but not limited to, repairs, maintenance, boarding and securing the premises, if any, for the protection of said premises, or so much thereof as the purchase money of the mortgage premises will pay of any of the same.

In case the plaintiff is the purchaser of any of the mortgaged premises at the sale, or in the event that the rights of the purchaser at the sale and the terms of sale under this judgment shall be assigned to and be acquired by the plaintiff, and a valid assignment thereof filed with the Referee, the Referee shall not require the plaintiff to pay in cash the entire amount bid at such sale, but shall execute and deliver to the plaintiff a deed of the premises sold upon the payment to the Referee of the amount specified above in items marked "1" and "2" and the amount of the aforesaid taxes, assessments and water rates and interest or

penalties thereon, or in lieu of the payment of the last mentioned amounts upon filing with the Referee receipts of the proper municipal authorities, showing the payment thereof; or an affidavit by plaintiff setting forth that payment has been made; provided however plaintiff shall not be required to pay said taxes, assessments and water rents unless same are due and payable on the date of sale, or any adjourned date thereof, irrespective of the date upon which same may become a lien upon said premises; that the balance of the amount bid after deducting therefrom the aforesaid amount paid by the plaintiff for Referee's fees, advertising expenses and taxes, assessments and water rates, shall be allowed to the plaintiff and applied by the Referee upon the amounts due to the plaintiff as specified above in item marked "3", that if after so applying the balance of the amounts bid there shall be a surplus over and above the amounts due to the plaintiff, the plaintiff shall pay to the Referee upon delivery to it of the Referee's deed the amount of such surplus; that the Referee on receiving the several amounts from the plaintiff shall forthwith pay therefrom the taxes, assessments, water rates and interest or penalties thereon, unless the same shall have already been paid, and shall deposit the balance in said depository as hereinabove directed.

The Referee shall take the receipt of the plaintiff or its attorneys for the amounts paid as hereinbefore directed, in item marked "3" and file it with his report of sale; that he deposit the surplus moneys, if any, within five days after the same shall be received and be ascertainable, to be withdrawn only on the order of this Court; that the Referee shall make a report of such sale and file it

with the Clerk of this Court, with all convenient speed; that if the proceeds of such sale be insufficient to pay the amount so reported due to the plaintiff with the expenses of the sale, interest, costs and allowances, the Referee shall specify the amount of such deficiency in his report of sale; and it is further

ORDERED, ADJUDGED AND DECREED that the plaintiff recover of defendants Haitram Persaud and Jean Persaud, jointly and severally the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the mortgage debt remaining unsatisfied after a sale of the mortgaged premises and the application of the proceeds thereof, provided a motion for a deficiency judgment shall be made as prescribed by RPAPL §1371, and the amount thereof is determined and awarded by an order of this Court as provided for in that section; and it is further

ORDERED, ADJUDGED AND DECREED that the purchaser or purchasers at said sale be let into possession on production of the Referee's deed; and it is further

ORDERED, ADJUDGED AND DECREED that each and all of the defendants in this action and all persons claiming under them after the filing of the notice of the pendency of this action, be and they hereby are forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in said mortgaged premises and each and every part thereof.

Full descriptions of the mortgaged premises hereinbefore mentioned are annexed hereto.

ENTER:

Eugene H. Nickerson

United States District Judge

FILE: 11746

SCHEDULE A
Description of the Mortgaged Premises

PARCEL 1

560 7th Avenue
Brooklyn, New York

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of 7th Avenue, distant 25 feet southerly from the corner formed by the intersection of the westerly side of 7th Avenue with the southerly side of 19th Street,

RUNNING THENCE westerly parallel with 19th Street and part of the distance through a party wall 72 feet;

THENCE southerly parallel with 7th Avenue, 25 feet;

THENCE easterly again parallel with 19th Street and part of the distance through another party wall 72 feet to the westerly side of 7th Avenue;

THENCE northerly along the westerly side of 7th Avenue 25 feet to the point or place of BEGINNING.

FILE: 11746

SCHEDULE A
Description of the Mortgaged Premises

PARCEL 2

197 Adelphi Street
a/k/a 45 Willoughby Avenue
Brooklyn, New York

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Willoughby Avenue and the easterly side of Adelphi Street;

RUNNING THENCE easterly along the northerly side of Willoughby Avenue 80 feet;

THENCE northerly at right angles to Willoughby Avenue 38 feet ½ inches;

THENCE westerly at right angles to Adelphi Street 86 feet to the easterly side of Adelphi Street;

THENCE southerly along the easterly side of Adelphi Street 21 feet 5 inches to the point or place of BEGINNING.

FILE: 11746

SCHEDULE A
Description of the Mortgaged Premises

PARCEL 3
275 23rd Street
Brooklyn, New York

ALL that certain lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the northeasterly side of 23rd Street, distant 246 feet 7 inches northwesterly from the northerly corner of 6th Avenue and 23rd Street;

RUNNING THENCE northeasterly parallel with 6th Avenue and part of the distance through a party wall 100 feet;

THENCE northwesterly parallel with 23rd Street 26 feet 9 inches;

THENCE southwesterly and parallel with 6th Avenue and part of the distance through a party wall 100 feet to the northeasterly side of 23rd Street;

AND THENCE southeasterly along the northeasterly side of 23rd Street 26 feet 9 inches to the point or place of BEGINNING.